

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed September 23, 2008. At the time of the Office Action, Claims 10-20 were pending in this Application. Claims 10-20 were rejected. Claims 10, 17, and 20 have been amended. Claims 21-29 have been added. Claims 1-10 were previously cancelled without prejudice or disclaimer. Applicants respectfully request reconsideration and favorable action in this case.

Rejections under 35 U.S.C. §103

Claims 10-13 and 15-20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,790,516 issued to Perols Leif Mikael Gudmundson et al. ("*Gudmundson*") and further in view of U.S. Patent 6,463,105 issued to Rajaram Ramesh ("*Ramesh*").

Claim 14 stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Gudmundson* in view of *Ramesh*, and further in view of U.S. Patent 4,513,385 issued to David L. Muri ("*Muri*").

Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

In order to establish a prima facie case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Even if each limitation is disclosed in a combination of references, however, a claim composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). Rather, the Examiner must identify an apparent reason to combine the known elements in the fashion claimed. *Id.* "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Finally, the reason must be free of the distortion caused by hindsight bias and may not rely on ex post reasoning. *KSR*, 127 S.Ct. at 1742. In addition, evidence that such a combination

was uniquely challenging or difficult tends to show that a claim was not obvious. *Leapfrog Enterprises, Inc. v. Fisher-Price, Inc. and Mattel, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007), citing *KSR*, 127 S.Ct. at 1741.

Even though Applicant believed that the previously amended independent claims clearly included the limitation that the pre-emphasis is only performed for a part of the carrier frequencies of a sub-carrier band, Applicant amended the independent claims to clearly state that the pre-emphasis is only performed for the signals fed to the carrier frequencies that are located at the edges of the sub-carrier band. This limitation was present in former dependent claim 17 and is disclosed in particular in the original submitted specification, for example on page 7, paragraph [0027].

With respect to former claim 17, the Examiner stated that performing the pre-emphasis only for carrier frequencies that are located in the edge area of a sub-carrier band is allegedly disclosed in *Gudmundson* in col. 3, lines 20-55 and col. 4 lines 5-15. Applicant respectfully disagrees. *Gudmundson*, neither discloses nor suggests to perform a pre-emphasis for only selected frequencies of a sub-carrier band, let alone for those frequencies that are located at the edge of the sub-carrier band. Col. 3, lines 20-25 of *Gudmundson* merely discuss a single carrier system and col. 4, lines 5-15 merely discusses the influence of a guard time which can be introduced between symbols. However, none of the cited paragraphs discuss the application of a pre-emphasis to only certain frequencies of a sub-carrier band as claimed. *Ramesh* does not add anything to fill this gap.

Hence, Applicant believes that both independent claims 10 and 20 are allowable in view of the cited prior art. New claims 21-29 correspond to dependent claims 11-19. Applicants respectfully submit that the dependent Claims are allowable at least to the extent of the independent Claim to which they refer, respectively. Thus, Applicants respectfully request reconsideration and allowance of the dependent Claims. Applicants reserve the right to make further arguments regarding the Examiner's rejections under 35 U.S.C. §103(a), if necessary, and do not concede that the Examiner's proposed combinations are proper.

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CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

Applicants believe there are no other fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2545.

Respectfully submitted,
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